

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:)	Chapter 13
)	
Melissa Mary Beck,)	Case No. 21-11518 (BLS)
)	
Debtor.)	Related to Docket Nos. 21, 36, 52, 56

**MEMORANDUM ORDER DENYING MOTION TO
ANNUL AUTOMATIC STAY AND MOTION FOR RELIEF
FROM STAY, AND GRANTING RELATED RELIEF**

Before the Court are the Expedited Motion of NewRez LLC d/b/a Shellpoint Mortgage Servicing to Annul the Automatic Stay Nunc Pro Tunc as of November 29, 2021 [Docket No. 53] and the related Expedited Motion to Annul Automatic Stay [Docket No. 36] (collectively, the “Motions”). The Motions are opposed by the Debtor [Docket No. 43]. For the reasons stated below, the Motions are denied, the sheriff sale of the Debtor’s home is vacated, and the automatic stay is in effect to permit prosecution of this Chapter 13 case by the Debtor.

1. The record reflects that the parties have stipulated¹ to the following facts:
 - On October 28, 2019, the Debtor filed a Chapter 13 bankruptcy petition, Case No. 19-12288 (BLS). An order was entered by the Bankruptcy Court on November 27, 2019 dismissing that bankruptcy filing with prejudice and setting a two-year bar for Debtor to file bankruptcy from the date of the order.

¹ See Docket No. 59

- A sheriff sale of the Debtor's home located at 37 Tallowick Lane, Dover, Delaware (the "Property") was scheduled to take place on Thursday, December 2, 2021.
- On November 22, 2021, the Debtor filed another Chapter 13 bankruptcy petition, commencing Case No. 21-11518 (BLS). This filing was within the time period while Debtor was within the 2-year bar to filing for bankruptcy.
- The Court signed an order dismissing this bankruptcy case on November 22, 2021. That Order was entered on the case docket on November 23, 2021.
- The Thanksgiving Holiday took place on Thursday, November 25, 2022. There is no mail service on Thanksgiving.
- The Certificate of Notice for the Order dismissing Debtor's Case No. 21-11518 (BLS) was placed in the mail by the Bankruptcy Noticing Center on November 25, 2021.
- Debtor called Orlans PC on November 23, 2021 to report that she had filed a bankruptcy petition to stop the sheriff sale and asked for a fax number to provide the bankruptcy filing information. She was told that Orlans PC was aware of the bankruptcy case filing and that the sale would be cancelled. Debtor called Orlans PC again on November 24, 2021 to confirm that the sheriff sale would be cancelled. Debtor was told that the sale for December 2, 2021 has been requested to be cancelled.
- Agents of Orlans PC became aware that Debtor's bankruptcy was dismissed on the morning of November 30, 2021 when reviewing the docket and the Order

Dismissing the Debtor's Bankruptcy case (D.I. 7) came to their attention. The decision was then made to proceed with the December 2, 2021 sheriff sale.

- Phoenixians, LLC ("Phoenixians") submitted the winning bid of \$195,000 to purchase the Property at the sheriff sale. Phoenixians submitted the required down payment on the day of the sheriff sale.
- On December 21, 2021, Bankruptcy Court entered an order Granting Debtor's Emergency Motion to Reconsider Dismissal of Case (the "Emergency Motion") which reinstated the Debtor's Bankruptcy Case No. 21-11518 (BLS) and imposed the automatic stay *nunc pro tunc* as of November 29, 2021.
- Phoenixians was listed as an entity receiving service by mail on Debtor's Certificate of Service for the Emergency Motion.
- On January 10, 2022, a further Stipulated Order was entered amending the Court's Order from December 21, 2021 allowing Shellpoint and other interested parties the opportunity to contest the automatic stay being applied retroactively as of November 29, 2021 while maintaining the status quo and ordering that the sheriff sale of the Property could not be confirmed without further order of the Bankruptcy Court.
- The sheriff sale of the Property has not been confirmed and cannot be confirmed without further order of this Bankruptcy Court.
- At a status conference with the Court held on February 8, 2022, the Court set a deadline of February 18, 2022 for Debtor to file her Bankruptcy Schedules, Statement of Financial Affairs and Chapter 13 Plan among other documents.

- Debtor met this deadline and has filed her Bankruptcy Schedules, Statement of Financial Affairs, Chapter 13 Plan, and other documents on February 18, 2022.
- Shellpoint filed a Motion for Relief from Automatic Stay and for Prospective Relief from the Automatic Stay on January 26, 2022 (D.I. 32).
- Phoenicians filed its Expedited Motion to Annul Automatic Stay on February 14, 2022 (D.I. 36).

2. The Court conducted a hearing on March 25, 2022 and heard testimony adduced from the Debtor and from the principal of Phoenicians (purchaser of the Property at the sheriff sale). The record is fully developed,² and the matter is ripe for disposition.

3. This case presents an unusual fact pattern but a clear question: does the automatic stay operate here to bar consummation of the sheriff sale, or will the Property be sold to Phoenicians? The Court concludes that the automatic stay of 11 U.S.C. § 362 does in fact preclude confirmation and consummation of the sale of the Debtor's home.

4. As stipulated by the parties, the petition here was filed five days before expiry of the two-year bar period ordered by this Court. The Court dismissed the petition based on that ground, but the record indicates that Debtor likely did not receive timely notice of the entry of that dismissal order on account of the intervening Thanksgiving holiday. The parties are in agreement that the Debtor made appropriate inquiries in late November 2021 and received assurances that the sheriff sale would be cancelled.³

² The parties have provided the Court with competing authorities supporting their respective positions. *See In re Pamela Knapper*, 407 F.2d 573 (3d Cir. 2005); *In re Siciliano*, 13 F.3d 748 (3d Cir. 1994).

³ The Court finds this stipulated fact critical to disposition of this matter: Debtor inquired in advance of December 2, 2021 and was advised that the sale would be cancelled. Movant decided to go ahead with the sale after learning of the dismissal, but it is the Court's understanding and expectation that the Debtor would have simply re-filed her case after expiry of the bar period had she not been advised that the sale would be cancelled.

5. Nevertheless, the sheriff sale proceeded on December 2, 2021, with parties acting in reliance upon the dismissal order. Phoenixians was the winning bidder, but in connection with the reinstatement of the Chapter 13 case, the Court has directed that the sale not be confirmed until this Court had an opportunity to address the issue and rule upon whether the bankruptcy filing prevents that sale and transfer of the Debtor's home.⁴

6. As noted, the Court reinstated the Debtor's Chapter 13 case by Order dated December 21, 2021. The Court here rules that reinstatement of the case operated to reimpose the automatic stay effective as of November 29, 2021. To the extent that the 2019 dismissal order entered in Case No. 19-12288 barred the current petition, the Court observes that it possesses inherent discretion to construe, enforce or suspend its own order in these circumstances.


7. Having concluded that the sale of the Property occurred when the automatic stay was in effect, the Court finds that the sale is void. The record here is abundantly clear that all parties, and particularly Phoenixians, have acted in good faith and in reasonable reliance upon the apparent procedural posture of this matter. Certainly, no sanction or other remedy is appropriate with respect to these parties, other than measures appropriate to return the parties to their positions *status quo ante*.

8. Accordingly, the Court directs that, the sale of the Property having been deemed void, Phoenixians is entitled to return of all funds paid over in connection with the attempted sale of the Property. The Kent County Sheriff, its agents or any other parties holding such funds shall remit such funds to Phoenixians within 21 days of the date hereof.

⁴ The Court expresses its gratitude to the Honorable Reneta Green-Streett of the Delaware Superior Court for her courtesy and cooperation in preserving the *status quo* pending disposition of this matter.

9. The Court will conduct a status conference with the Debtor on May 24, 2022 at 10:00 a.m. for purposes of determining next steps for this Chapter 13 proceeding.

Dated: May 6, 2022



Brendan Linehan Shannon
United States Bankruptcy Judge

cc: William F. Jaworski, Esquire
Chapter 13 Trustee
Peter Sweeney, Esquire
John Tarburton, Esquire
Peter Schaefer, Esquire
Kent County Sheriff
The Honorable Reneta Green-Streett